IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6805 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARAYANDAS C JOSHI

Versus

DIVISIONAL CONTROLLER

Appearance:

MR MUKESH H RATHOD for Petitioner

MR HARDIK C RAWAL for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 16/06/2000

ORAL JUDGEMENT

This is a petition under the provisions of Industrial Disputes Act, 1947 read with Article 227 of the Constitution of India challenging the order passed by the learned President, Labour Court at Baroda on

17.1.1987 in Reference Case No.390/83. The petitioner above named was a workman in the employment of the respondent. He remained absent from duty without any intimation from 1.5.1981 to 2.6.1981. Therefore, an enquiry was conducted and after the conclusion of the enquiry, he was dismissed from the service. Therefore, the aforesaid matter was filed and the learned President, Labour Court passed award dated 17.1.1987 setting aside the aforesaid order of dismissal and directed reinstatement of the petitioner without backwages. The petitioner has challenged the aforesaid order inasmuch as backwages have not been paid to him. It has been mainly contended that the backwages is a matter of rule and when the reinstatment is ordered, backwages should have been awarded. Therefore, this petition has been filed for getting the backwages.

2. Rule was issued and the respondent Corporation has put in appearance. I have heard the learned Advocates for the parties.

3. It has been noticed during the course of argument that this was not the first default on the part of the petitioner. It appears that the petitioner remained absent in 1980 and he was reprimanded and again he remained absent in the year 1981, again he was reprimanded and a fine was imposed on him. In 1980,he had not issued tickets to passenger, and therefore, his increment was stopped for two months. Again in 1981, he had not issued tickets to the passengers for which a fine was imposed. This shows that in 1981 he has committed same faults in the past also. Therefore, this was not the first default.

4. Learned Advocate for the petitioner has relied upon a decision of 1987 GLR (1) 139 in the case of Vijaykumar M Jasani v Gujarat State Road Transport Corporation, wherein it has been observed that normally backwages should have been awarded by the Court. However, learned Advocate for the respondent has relied upon a recent decision of this Court in the case of M L Chauhan v. Divisional Controller, GSRTC, reported in 1991 (1) GLH 527. There it has been observed that it is required to be noted that looking to the nature of the service, if the appellant was not on duty, the GSRTC was unable to operate the bus in charge of the appellant on a route in the absence of the appellant, a Conductor. It was also found that in the past also, he used to remain absent. It was a case for a short period but it was considered that because of the absence without any previous notice or intimati[on, the S.T. Corporation has

been put to hardship and difficulties. There the absence was for a period from 6.1.1994 to 23.1.1994. It was, therefore, for a period of about 16 days and yet this court found that punishment could be properly implosed on such an employee. Therefore, the appellant had approached the Labour Court and the Labour court passed order of reinstatement with 50% backwages. The appellant challenged the said order by preferring Special Civil Application No.3650/98. The Gujarat State Road Transport Corporation challenged the order by preferring Special Civil Application No.4711/98. The learned Single Judge dismissed the petition being Special Civil Application No.3650/98 preferred by the appellant. However, the learned Single Judge allowed the Civil Application No.4711/98 preferred by the GSRTC and quashed and set aside the award passed by the Labour Court.

5. In the aforesaid view of the matter, this Court has observed that we have absolutely no hesitation in holding that the Single Judge has not committed any error in passing the impugned order and in the result the appeal was dismissed. There it was held that mere production of medical certificate justifying absence, without prior initmation will not exonerate an employee, particularly when in the enquiry proceedings the charge is proved. It has also been observed that absence from duty especially in cases where the employee is connected with public service, cannot be tolerated.

6. It is clear that the petitioner remained absent without previous intimation for a month and he was holding responsible post of conductor and the bus cannot proceed without the conductor and the bus was being run by the GSRTC which is a public Corporation and a public body. If a bus is not started at a particular time, there would be lot of hue and cry by the passengers at large and the management would be in acute difficulty to meet with the situation. Therefore, with a view to set example, some harsh punishment has to be inflicted on the petitioner.

7. In the present case, the Labour Court has shown leniency by reinstating the petitioner. However, the backwages have not been awarded. It is true that there was some difficulty with respect to his ailing wife, but the petitioner could have contacted the employer either on phone or by registered post. But nothing has been done and the management was not aware as to for what period the petitioner would not attend and what would be the alternative arrangement to be made by them and for what period that should be done. In view of the above,

the aforesaid decision will clearly apply to the facts of the case before this Court.

8. In the aforesaid view of the mater, I am of the view that the Labour Court has not committed any illegality in passing the order of not giving backwages which order does not appear to be illegal on the basis of the past defaults on the part of the petitioner and considering that he was absent without prior intimation for a long period and thus the S.T.Corporation was put to great difficulty. This is, the

for the exercise of extra-ordinary powers under Araticles 226 and 227 of the Constitution of India.

9. Consequently, there is no merit in this petition and the same deserves to be dismissed. The petition is, therefore, ordered to be dismissed. Rule discharged. No order as to costs.

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msp.